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GRAND TRUNK RAILWAY
OF
CANADA.

LETTER ADDRESSED

TO THE

GLOBE NEWSPAPER, 6th May, 1861.

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THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

To the Editor of the Globe.

MR. EDITOR, SIR—

The organ of the Government in this City—the “Morning Chronicle,”—came out with a leader on Saturday, on the subject of this Railway. The *Morning Chronicle* attacks the veracity of a paragraph which appeared in your columns some days since—the statement made by you was truthful in every particular—the statements made by the *Chronicle*, are entirely the reverse of truth—and so much so, that before replying to them, I cannot but ask you to allow me the opportunity of giving the *Chronicle's* article in full—it is as follows :

“ THE GRAND TRUNK.

“ We learn by telegraph from Quebec that a parliamentary agent, representing the English bondholders of the Grand Trunk, has submitted a scheme to the Government for the bondholders working the line, to protect themselves, without prejudice to other interests. It is understood that the Government have refused to introduce or allow the introduction of a bill to facilitate this object.”

“ The *Globe* is not fully informed as to the facts connected with the Grand Trunk Bondholders' propositions, neither does it speak with honest candor as to what is “understood” of the intentions of the Government. We believe several applications have been made by the preference bondholders, not for Acts of Parliament, not for facilities, but for money, and the *Globe* will admit that were the Government disposed to grant these appeals, they could not comply with them. Even were the bondholders entitled to demand assistance, they are not in a position to receive it. They are quarrelling among themselves and with every party with whom they have to deal. They have instituted suits here and suits there, and if their

laying claims even to the firewood along the line of road, would have stopped the trains, we should not now have daily railroad communication with the West. They must first determine what their interests are, relatively to each other and the Stockholders, and they will then be in a position to treat with the Legislature or any other body—but not till then. It is not impossible that this will be done ; nay, it will have to be done before very long, for the Grand Trunk Railway will never be in the position it ought to occupy until its real owners, who, after all, are the bondholders, have the management of it. If the whole or nearly the whole of them come before the Legislature at a future session with a bill for the conversion of the bonds into stock, defining the footing on which the first preference bondholders, the second preference bondholders, the shareholders and the Provincial lien are to stand, giving to the first a quantity of stock equal in nominal value to their bonds—to the second, stock amounting to say 50 per cent of that value, to the third 10 per cent, &c., &c.,—they will doubtless find everybody willing to meet their views, and the Government will not “refuse to introduce or allow the introduction of a Bill to facilitate this object.” The difficulty is, we presume, that no bondholder has as yet come forward with energy and ability enough to propose and secure the general adoption of any such measure. Perhaps the hope, cherished even against hope, that the Government of Canada would again act the benevolent and charitable, has been the real cause of this supineness, and the Man for the Times will more readily be found now it is understood, in England as well as here, that the bondholders, like other mortals, must help themselves. There is a fine chance, here, for a financier, with strength of will enough to impress his views on the people, to make himself a reputation, and relieve one of the most gigantic, and withal most promising enterprises of the age, from the slough of despond into which it has fallen.”

Now, Sir, it does happen that the *Globe* did speak with candour in the paragraph to which the *Chronicle* has attempted, by the fabrication of several untruths, a reply—and I have no doubt but that a reply would **not** have been essayed, had it not been considered expedient to make the endeavor to “prop up” the Ministry, in consequence of the quasi defeat which was suffered by the “powers that be” on Friday night last.

The *Chronicle* proceeds to state as follows :

“ We believe several applications have been made by the Preference Bondholders, not for Acts of Parliament, not for facilities, but for money—and the *Globe* will admit, that were the Government disposed to grant these appeals, they could not comply with them.” Now, so far from the Preference Bondholders having asked **for money**---it is just what they **did not ask** the Government for—they did **not** ask this Province to expend a single additional dollar, for or on behalf of this Railway. But, Sir, they **did** ask for an Act of Parliament, they did ask for facilities.—The *Chronicle* has just reversed the terms of the application—(usual, I believe, with Government organs).—They seek to give utterance to what is **not said**---and allege to **have been** said, what it was never intended should be urged. The Preference Bondholders **did not ask for a dollar**.---The *Chronicle* says they **asked for money**.---The Preference Bondholders did ask for a Bill, for an Act of Parliament, and for facilities, just what the *Chronicle* says they did **not** ask for. Is it not humiliating that the Government Press should be so lost to the importance of truth ?

Well, Sir, I have said that the Preference Bondholders **asked for a Bill, and for facilities to be thereby granted** for the **improvement and preservation** of that property in which they are primarily interested, as first Mortgagees, and the leading features of their **proposed** Bill, may just shortly be stated as follows :

1. To preserve the property of the Railway intact, by the appointment of a Receiver, pending the settlement of legal rights and priorities which are in no way interfered with by the Bill.
2. To give enabling powers to raise, with consent of present Preference Bondholders, a new preferential capital, to pay the judgment creditors, if the Courts shall decide that they have a first lien over any part of the property—instead of allowing the property to be seized and sold, and **the line** to be stopped.
3. To give enabling powers also to raise a further sum as **new** preferential capital, (with consent as above) properly to equip the road, and afford increased facilities for its development, under the present management, which the Bill did not at this juncture propose to interfere with.

The Bill which the Preference Bondholders asked the Government to assist in passing is thus shortly epitomized—there would however be no objection on the part of the Bondholders to give the public (through the press) a full copy of the Bill—but I am even now convinced, that your readers, and the public generally, will perceive, that the terms of the Bill have been grossly mistated by the Chronicle.

But, again, why was the Bill asked? The appeal by the Preference Bondholders was made and as strongly urged upon the following cogent “reasons,” which it is submitted are amply sufficient to justify the concessions they asked, and be it remembered that they simply asked to be **allowed to help** themselves—without looking to the Province for any **pecuniary assistance** whatever.

1. Because the Grand Trunk Company is confessedly Insolvent, unable to carry on the traffic satisfactorily—and has declared through its Directors, the probability of its being stopped altogether.

2. Because it is in the highest degree important, nay positively **necessary**, for the welfare of the Province, and the proper discharge of many of the functions of the Government, that the road should not only be kept continuously open, but that the facilities for the proper conduct of the traffic should be largely increased and improved.

3. Because the Government has positively declared, in answer to a Memorial to itself and Petition to the Legislature made by the Company, that it cannot afford any substantial relief.

4. Because the Shareholders and Bondholders, as a body, have deliberately chosen to rest their last appeal, to the Canadian Parliament in the petition recently presented, the prayer of which is, that fully reserving all legal rights, such **speedy** and effectual relief may be afforded, as in the wisdom of the Legislature may be best adapted to the necessities and merits of the case, and may be best consistent with the rights of all parties.

5. Because the Bill submitted by the preference Bondholders, is the only measure propounded by any party,—Is proposed, though without prejudice—and with the view of a practical and speedy solution of great difficulties and dangers, by an important section of the preference Bondholders, first mortgagees of the entire property, and who are now before the Courts of Upper and Lower Canada,

seeking the enforcement of their claims, and which Bill conforms entirely to the prayer of the Petitioners with the single exception of a quality—that **it does** not ask for any advance of **money** from the Province.

6. Because **time** is an element of the highest consequence in preserving the property from waste and delapidation, and in putting this great enterprise (in which the onward progress of the Province is so intimately wound up) in a condition commensurate with its importance, and moreover time is the very essence of the contract now to be made with parties whose interests will inevitably be entirely wiped out if not accepted.

7. Because under the Bill, if adopted and brought into operation, the judgment creditors and others having simple contract claims, will have fuller and more speedy payment than, even, if they succeed in their suits, they can have otherwise.

8. Because the Government are under a moral obligation of seizing this, perhaps the only opportunity which will be afforded them, of keeping alive the interests of the unsecured Bond and Shareholders, whose money was undoubtedly obtained on the faith of the statements put forward in the original prospectus, backed by the names of two leading capitalists in England, (the Messrs. Baring and the Messrs. Glyn,) who were therein held forth to the public **as Agents of the Province of Canada, and Directors of the Company in behalf of the Canadian Government.**

9. Because the Bill will, in this instance, afford to the Government all the protection of its interests in keeping open the road, the carriage of the mails, &c., whilst it will **avoid** the necessity of Government interference, involving, if not a large expenditure of the public funds, numerous jealousies and complications of many kinds.

10. Because all delay is fraught with danger, and by postponing indefinitely all chance of relief to most of the classes interested, will lead to irritation among all, and loss and ruin to many.

Those were the reasons upon which the Bondholders asked for a Bill.

Your readers, Sir, will find in this "Bill" and in these "Reasons" no awkward attempts at misplaced subtlety which would entail liti-

gation and misery hereafter on the unfortunate Stockholders—the widows and orphans who have been deluded by high sounding names into this “concern.” Your readers, Sir, will find no wilful deviations into crooked by-paths—no doubts wantonly flung out like “low-born insists,” to spread wretchedness and **confusion** every where. The Bill seeks to compromise all existing difficulties, to bring that **present** confusion, and ruinous it is to all, into order and regularity. Your readers will observe, Sir, that instead of perpetuating a feeling of insecurity—the Bill seeks to make all secure—Bondholders, Shareholders and Judgment Creditors, as far as they are respectively entitled, alike. The Bill, Sir, does not seek to avoid points, which it is for the public welfare, or for private interests, to decide. The Bill, Sir, and I say it with confidence, exhibits sound sense in transparent language, confounding to further jobbery, and bearing down obstacle after obstacle.

It has been ignored ! it has been repudiated ! For why ? In a short season, the path of truth will be clear,—the way of justice will be made straight ! and the public in this Province, and in the Parent home,—for *each* are sufferers—will learn the reason why !!!

The *Chronicle* then proceeds to state that “the preference Bondholders are quarrelling among themselves and with every party with whom they have to deal.” Now, Sir, this statement is false. The answer to this unfounded charge has already been made by the Preference Bondholders in a pamphlet which they caused to be published some months ago, entitled “case of the Preference Bondholders and its bearings on the position and rights of the other classes interested in the Railway.” I quote from page 5 :

“In the Directors’ Report of the 26th October, 1860, an announcement was, however, made, which very greatly alarmed the Preference Bondholders. It was as follows :—

“In the present embarrassed state of the Company’s affairs, and the uncertainty of relief from the Government adequate to meet its liabilities, Messrs. Baring, Brothers and Co., and Messrs. Glyn, Mills and Co., *have obtained* a Judgment against the Company for debts due to them and others whom they represent, *which vests in their agents the power of seizure of the rolling stock of the road,*

but this measure has been adopted for the general benefit of all *present* creditors, to guard against hostile prosecution of individual claims, and for the protection of the Company's interests."

"Among *present* creditors, the London Board, on being appealed to, stated they did not include the Preference Bondholders. The above announcement was the first intimation by the Directors that any legal proceedings had been taken against the Company.

"In order to ascertain whether the Judgment Creditors really possessed the "*power*" which the Directors asserted in their Report, a case was laid before eminent Equity Counsel (Sir Hugh Cairns, Q. C., Mr. Amphlett, Q. C., and Mr. Westlake), accompanied by all the Canadian Acts relating to the Company, to advise thereon, and also as to the rights and remedies of the First Preference Bondholders, and the following is a copy of their opinion :—

- "1. We are of opinion that by the terms of their Bonds and of the Canadian Statutes, the First Preferential Bondholders of the Grand Trunk Railway Company of Canada possess an hypothec, mortgage, charge or lien, of the same nature, covering the same kinds of property, and ranking in the same order of priority, with that which the Province had previous to the Act of 1856, st. 19 and 20 Vic., cap. 111; and that such charge extends to the rolling stock and plant of the Company as well as to the road and works, and is a first charge thereon.
- "2. We are of opinion that the said First Preferential Bondholders are entitled, in case of any danger to their security, to have Receivers appointed, or such other means employed as, by the laws of the respective jurisdictions through which the Railway passes, may be provided for protecting and making available the property included in their charge; and assuming that there is an evident prospect of the revenue of the Company proving insufficient to pay the interest becoming due on their bonds, and that judgments to large amounts have been obtained against the Company in Upper Canada, we consider that an application to the Court of Chancery in Upper Canada for a Receiver, and an Injunction to restrain the judgment creditors from issuing execution, would be successful.

“ This opinion, in effect, amounts to this : that the First Preferential Bondholders are in the position of First Mortgagees on all the property of the Company, including the rolling stock, and that, consequently, no judgment against the Company can be enforced, except subject to the Preference Bondholders’ prior claims.

“ This view of the construction of the Acts has been confirmed by the opinion of eminent Counsel both in Upper and Lower Canada.

“ No contrary opinion of English or Canadian Counsel has been produced ; and we have reason to assume, from what has passed, that none has been obtained which can justify the claim of the Judgment Creditors “ to the power of seizure of the rolling stock.”

“ In accordance with the opinion of Counsel, proceedings have been commenced in Canada to have the rights of the Preference Bondholders settled and determined, and also to protect the property by the appointment of a Receiver in case of attack by Judgment Creditors, and those proceeding are now going on.

“ Although the interest on the First Preference Bonds, which became due on the 1st January, 1861, was not met, the Directors, in their recent Report, dated 29th December, 1860, stated that they were applying the net earnings, beyond working expenses, in meeting pressing claims for *past expenditure* in rolling stock, &c. Conceiving that they were not justified in that course, we communicated with the Solicitor to the Company on the subject, and the following is an extract from a letter received from him in reply, dated the 17th January, 1861 :—

“ I am instructed by the London Directors of the Grand Trunk Company to inform you, in reply to yours of the 5th and 14th inst., that they have passed a resolution calling upon the Canadian Board to apply the earnings of the undertaking in conformity with the opinions of Sir Hugh Cairns and Mr. Lloyd, and to *remit the balance to England towards payment of the interest to the Preference Bondholders* ; which course they trust will be satisfactory to your clients.”

“ By the resolution of the London Directors referred to in this letter, they admit that the Preference Bondholders have a first charge on the net proceeds, and that the Directors are *Receivers of such net proceeds in trust, in the first place, for the Preference Bondholders*. This

shuts out any dispute between the Preference Bondholders and the other classes interested in the Railway, and narrows the controversy to the question between the Preference Bondholders and the Judgment Creditors, who are outside claimants.

“ The interests of the Preference Bondholders and of the ordinary Bond and Shareholders are identical, in keeping the road open and developing its resources, while the necessary effect of enforcing the claim of the Judgment Creditors, by seizure of the rolling stock, would be to stop the road and so do irreparable damage to all classes interested, whether as Shareholders or Bondholders.

“ The claim of the Judgment Creditors goes to the very root of the security of the Preference Bondholders. If the *present* Judgment Creditors can seize the *present* rolling stock, then, if they were paid off, what is there to prevent fresh Judgment Creditors springing up hereafter and claiming the same rights? In this way, the *ordinary* Bonds as they become due, which they *all* do before the First Preference Bonds, might, by obtaining judgments, get what would practically be a priority over the Preference Bondholders; for nothing can be clearer than that whoever, *for the time being*, has the power of seizing the rolling stock and plant, can coerce the other classes into terms, and so get paid in preference to any one else. A large proportion of the ordinary Bonds and the whole of the Unsecured Debt have been created *since* the issue of the First Preference Bonds, and *with full notice*, therefore, of the Preference Bondholders’ first charge.

“ The Directors, in recommending the raising of a million and-a-half sterling in March, 1860, proposed to do so by the issue of Bonds for short periods, but “ *without interfering with the existing preferential rights of the Bondholders of all classes;*” whereas, if the holders of such proposed Bonds could, as is now suggested, obtain “ the power of seizure of the rolling stock ” when their Bonds became due, they would practically have priority, not only over the Preferential Bonds, but over all other Bonds which became due at a date subsequent to theirs.

“ The Judgment Creditors having resorted to legal proceedings, the Preference Bondholders are **compelled**, *in self-defence*, to take steps to protect the rolling stock from seizure.

“ The legal contest with the Judgment Creditors cannot, it is believed, be a protracted one, as the whole question turns on the construction of the Canadian Acts. There are no disputed facts.”

This, I submit, is a complete answer to the allegation of the *Chronicle* that “ we ” must first determine what our interests are relatively to each other and the Stockholders.

The *Chronicle* admits that the Legislature will have to interfere, and that before long, and then proceeds to inform its readers, that if the whole or nearly the whole of the parties interested come before the Legislature at a **future session**, with a Bill—the scheme of which, as given, is most reprehensible—then, “ they will doubtless find every body willing to meet their views, and the Government will not refuse to introduce or allow the introduction of a Bill to facilitate this object.”

Now what have we here, Sir,—clearly this, that the Government of this country desire to retain their control of this gigantic enterprise for another season—and why ? The elections are coming on—the necessity to them of this monster engine of political robbery and patronage is paramount—It is a principal of equity—“ that it is fraudulent to claim what you must restore.”—It is clear that this principle has been grossly violated by the narrow-minded repudiation of the claims of the preference Bondholders by the Government.—What says the Government ? “ We will not allow you, Bondholders, who are trying to introduce something like order and principle in the chaos of this truly monster engine of jobbery, to set up your rights against our necessities.” Surely this must draw down upon the Government the denunciations of all—the denunciations of the Bondholders, Shareholders, Creditors, Traders and the **People** of this Province.—Surely these classes must all see, and as surely they will take care to break down that system, and that course of proceeding which the Government is essaying to carry through, so hideously favorable to the most odious pettifogging and extortion, so ruinous to every body (except themselves, and I make no doubt it will be fatal to them) and so oppressive to the unfortunate who have been dragged into the concern, whether as Bondholders, Shareholders or Creditors.

Shall justice be so deformed !

I conclude these remarks by referring you and your readers to “ an answer ” to the statements of the *Chronicle* (to which I have referred),

under the signature of Mr. William Pare, a gentleman representing the Preference Bondholders in the character of "agent" in this Province, and I ask for space in your columns for the insertion of this, and Mr. Pare's communication. Apologizing for their necessary length.

Since writing the foregoing, a *Leader* of the 3rd inst. has been handed to me, which also contains an article on "The Grand Trunk Railway." The *Leader* is prepared to admit that the Bondholders' proposed Bill "may not have been a bad one." The *Leader* thinks the propositions made "were reasonable," and the only objection offered proceeds upon this: that this "fair Bill"—these "reasonable propositions" were offered by Mr. Pare, as representing **only** a section of the Bondholders.—It is true that Mr. Pare represents only a section of the preference Bondholders. It is true that he represents the most influential section. It is true that he could have represented at least a majority, had it not been for the indefinite policy of a party who rested their hopes on Government aid to be accomplished through the petition to Parliament. But those whom he does represent—determined as they were to make justice their aim—and to **assert** and **enforce** their rights before the legal tribunals of this Province, preferred rather to act in a small than in a large body, and you, Sir, are well aware, as all your commercial readers will be, how necessary it is in legal proceedings to proceed at the instance of the **few** who, in the justice of their cause, control the whole, than to proceed at the instance of the whole, and thus embarrass (so dangerous in this litigation to the successful issue of justice) the legal proceedings.

Assuming, however, that Mr. Pare represents only a section. The maxim is—and it is sound law: *Culpa caret qui scit sed prohibere non potest*. He is guiltless who knows and cannot prevent, and the reverse of this proposition is equally true: He is guilty who knows and can prevent. Mr. Pare would have been guilty indeed, and the preference Bondholders whom he represents, and who in truth represent the class—would have been guilty if knowing the wrongs committed—the jobberies perpetrated—the difficulties which exist on all sides—he and they had not devised some "reasonable" scheme to extricate the "Grand Trunk" out of these difficulties—he and they have done so—or sought to do so—and they have done so negatively—and positively *negatively*;—by essaying to bring to light what ought

and should, and must be revealed, in regard to the affairs of this Company—and *positively*, in suggesting a “something” which ought to be done, and that immediately, in the shape of passing the proposed “reasonable” Bill into Law.

It is **not true** that the preference Bondholders have applied to the Courts for a Receiver—and the proceedings in the suit will confirm this denial.

It is *not true* that the proposed “reasonable” Bill essayed to “stop the suit”—on the contrary it **expressly provided** that the suit should go on, in order that the legal rights of all parties—that is, as between the preference Bondholders and the judgment Creditors—should be determined.

The correspondence between the Government and Mr. Pare on the subject of his mission, will doubtless be called for, and it will then appear how far he has acted, in the interest of all concerned in this undertaking—and how far the Government has endeavored to grasp—or abandon and “pooh pooh” the question in the interests of the Province.—The gradual shades by which the Government have attempted to define their policy to him are as hard to define, as it is to settle the precise moment at which day becomes night.

Whether Mr. Pare has or will throw himself into the arms of the opposition, matters little to the *Leader*. But the *Leader* may rest assured that wherever he goes—or to whomsoever he applies—for assistance; he has the cause of truth and justice on his side—he has good faith in that cause;—and truth and justice must prevail,—If the old adage applies: *Ejus est non velle qui potest velle*.—(“He who can say Yes, can say No”)—I am assured that the “opposition” will not say No to such a cause—in which the well-being of every individual in this Province is essentially concerned.

I am, Sir,

Your obedient servant,

“ONE WHO KNOWS.”

Quebec, 6th May, 1861.

